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February 28, 2011

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Data Requested in Special Access NPRM, WC Docket No. 05-25 and RM-10593

Dear Ms. Dortch:

On February 9, 2011, Level 3 submitted questions which they assert the Commission should include in a second data request in the above-referenced proceedings. Although Level 3 has, to the best of our knowledge, yet to provide any of its own data in response to the Commission's initial data request,[1] it nevertheless asks the Commission to seek competitively sensitive and highly confidential data that is irrelevant to the proceedings at hand. The Commission should reject Level 3's request.

To understand the broad and fast-moving changes occurring in the high-capacity services marketplace, the Commission must obtain substantive, relevant, and accurate data. As Verizon noted in its comments[2] on the Commission's initial Data Request, due to certain limitations in the scope and requirements of that request, it cannot provide the Commission with a complete and accurate picture of the competitive landscape. However, adopting future requests that seek irrelevant data would bog down the inquiry and will not rectify these deficiencies. Moreover, the Commission should guard against allowing competitors to use the data request process to obtain access to highly confidential competitive information and to impose highly burdensome requests on providers and buyers when the requested information would not advance the Commission's investigation. Unfortunately, that is exactly what Level 3 has requested that the Commission do.

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[1] Public Notice, *Data Requested in Special Access NPRM*, 25 FCC Rcd 15146 (2010) ("Data Request").

[2] *See* Comments of Verizon, *Data Requested in Special Access NPRM*, WC Docket No. 05-25 and RM 10-10593 (Jan. 27, 2011).

Rather than assist the Commission's inquiry by providing its own data, Level 3 here attempts to sidetrack the proceedings by seeking to add more than forty (counting subparts) new requests for information that are either already available or are outside the scope of and irrelevant to this inquiry.

For example, Level 3 seeks detailed information regarding contract tariffs. But the terms of contract tariffs and tariffs are already on file with the Commission and are publicly available. Other data Level 3 seeks may be of great competitive value to a competitor like Level 3, but does not add additional information relevant to this inquiry. For instance, Level 3 seeks detailed information from the incumbent LECs (ILECs) about the customers, revenues, and volumes of sales under each contract, contract tariff, or tariff, and seeks dollar volume for each, split out by MSA, and seeks similar information for affiliates' customers. And Level 3 seeks information about which plans are subscribed to by which customers, and requests information about the volume and terms committed to under each. But these questions go more to enabling Level 3 to assess the popularity of certain plans, rather than determining whether competition exists in the marketplace. Likewise, Level 3's proposed requests appear to seek data about private contracts for very high-capacity or IP-based services that are not subject to price caps or the associated pricing flexibility regime, and thus are not even part of this inquiry. Thus, while Level 3 might like to receive such information for its own commercial reasons, it is not relevant to the Commission's determination here.

Similarly, Level 3 seeks information about sales to affiliated entities. Again, Level 3's request seeks irrelevant information. Providers sell to affiliates under the same plans that are sold to third parties, and the Commission already has rules in place with regard to contract tariffs to govern these types of sales. *See, e.g.*, 47 C.F.R. 69.727(a)(2)(iii).

Level 3 also asks for information that the Commission can better obtain in other, more direct, ways. For example, Level 3 seeks to require ILECs to identify not only their current competitors by geographic area, but also to identify likely potential entrants for such competition within the next two years. Such information, particularly about intended market-entry plans, is best obtained directly from the competitors themselves, who are better-positioned to know their own plans. In fact, Verizon has repeatedly urged the Commission to request data directly from competitive providers about their future plans for introducing new services and facilities.

Level 3 tries to justify the information it seeks as necessary because it claims that the terms of Verizon contract tariffs "locked" purchasers into contracts that allegedly precluded them from self-supplying or purchasing from other subscribers.[3] While, as noted above, Verizon and other carriers' contracts are publicly available, Level 3 misconstrues the nature of special access contracts and pricing. As previously explained,[4] generally available special access discount

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[3] Letter from Eric J. Branfman, Level 3, to Marlene H. Dortch, FCC, *Special Access Rates for Price Cap Local Exchange Carriers*, WC Docket No. 05-25 (Feb. 9, 2011).

[4] Letter from Donna Epps, Verizon, to Marlene H. Dortch, FCC, *Special Access Rates for Price Cap Local Exchange Carriers*, WC Docket No. 05-25, RM-10593 (Aug. 16, 2010) (attached as Exhibit A).

plans and pricing flexibility contracts are a competitive response to the extensive competition for the provision of high-capacity services. Far from "locking in" customers, special access discount plans are entirely voluntary; do not restrict customers' ability to obtain high-capacity services from Verizon's competitors or through self-supply; and contain a wide range of terms and conditions to meet the needs of many different types of special access purchasers. Customers may choose from circuit-specific plans which provide customers with substantial discounts in exchange for a term (but not volume) commitment for specific circuits; or, from non-circuit specific plans which provide customers with substantial discounts in all special access services purchased in the covered region in exchange for a volume commitment, or a term and volume commitment, for a percentage of the customer's Verizon special access purchases.[5] The discount levels are comparable regardless of whether customers participate in a circuit specific or a non-circuit specific discount plan. *Id.*

Not only do Verizon's circuit specific discount plans not require any volume commitment, but Verizon's non-circuit specific discount plans and pricing flexibility contracts that do require a volume commitment do not require customers to exclusively purchase special access services from Verizon. In fact, those volume commitments apply only to the special access services that the customer plans to purchase from Verizon, and not the customer's overall high-capacity or special access usage. *Id.* at 7. Contrary to Level 3's claims, customers who participate in Verizon's volume-based discount plans and pricing flexibility contracts may, and in fact do, obtain high-capacity services from several different providers as well as through self-supply without penalty under Verizon contract terms. *Id*. There is no merit to Level 3's self-serving claims to the contrary.

This is a dynamic, rapidly growing marketplace; dramatic changes occurring even in the last year demonstrate the wide array of competitive alternatives to ILEC special access service available to customers. Yet, even as the receipt of responsive, appropriate data – both in response to the Data Request and to future requests – will further document the growth in competition, requests for extraneous information will needlessly complicate and hinder the analysis. The Commission should therefore not include Level 3's proposed requests in its second data request.

Please contact me should you have any questions.

Sincerely,

Donna Epps

Enclosure

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[5] *Id.* at 3.

Exhibit A

Donna Epps
Vice President
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August 16, 2010

Ex Parte

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: **Special Access Rates for Price Cap Local Exchange Carriers, WC Docket No. 05-25, RM-10593**

Dear Ms. Dortch:

Verizon's various special access discount offerings provide customers a variety of choices in plans that reduce the cost of service. Contrary to recent CLEC ex partes that recycle misguided accusations and incorrect characterizations, these discount plans provide pro-competitive alternatives that serve to lower the prices a variety of different types of customers pay.[1]

Verizon's generally available special access discount plans and pricing flexibility contracts are a competitive response to the extensive competition that Verizon faces in the provision of high-capacity services.[2] In addition, ILEC special access discount plans are competitive and provide substantial benefits to a wide range of special access purchasers. In fact, ILEC special access discount plans provide direct evidence that the marketplace is competitive. As Dr. Topper explained, "[t]he profusion of different tariffs and agreement structures is, if anything, an indication of competition; in order to capture and retain the business of prospective buyers, suppliers offer both price discounts and non-price benefits in a number of different dimensions, including service and simplified administration."[3] Dr. Topper further

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1 *See* Letter from William P. Hunt. Level 3, to Marlene Dortch, FCC, WC Docket No. 05-25 (July 21, 2010) ("Level 3 Ex Parte"); Letter from Jonathan Lechter, tw telecom, to Marlene Dortch, FCC, WC Docket No. 05-25 (July 22, 2010).

2 *See* Comments of Verizon and Verizon Wireless, WC Docket No. 05-25 at 49 (Jan. 19, 2010) ("Verizon Comments").

3 Verizon Comments, Attachment A: Declaration of Dr. Michael Topper, ¶ 68. *See* also Verizon Reply Comments, Attachment A: Reply Declaration of Dr. Michael Topper, ¶ 16 ("Topper Reply Decl.").

explained that discounts based on term and volume "have a number of pro competitive and efficiency justifications and are a common feature of many competitive industries."[4]

Verizon's special access discount plans are popular with a wide range of customers, and do not restrict customers' ability to obtain high-capacity services from Verizon's competitors or through self-supply.[5] Verizon's discount plans and pricing flexibility contracts are entirely voluntary and contain a wide range of terms and conditions to meet the needs of many different types of special access purchasers.[6]

To address some of the factual misconceptions included in these recent CLEC ex partes, below is an overview of the different types of special access discount plans and pricing flexibility contracts that Verizon offers special access purchasers. Attachment A to this ex parte is a matrix that outlines the key features of the different types of special access discount plans and pricing flexibility contracts that Verizon offers.

1. Verizon's Tariffed, Generally Available Discount Plans.

Verizon has introduced about nine generally available discount plans that are open to all customers who purchase special access services from Verizon. Verizon's generally available discount plans offer customers discounts of up to sixty-seven percent off of Verizon's standard tariffed rates.[7] Under the existing price cap and pricing flexibility[8] regulatory regime, Verizon

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4 Topper Reply Decl. ¶ 15. *See also* Comments of AT&T, WC Docket No. 05-25, Exhibit A: Declaration of Dr. Dennis Carlton and Dr. Hal Sider, ¶¶ 45, 90 (Jan. 19, 2010) (explaining that the types of volume and term discounts used in ILEC special access discount plans and pricing flexibility tariffs are prevalent in a number of different industries and also explained that "discounting and price reductions are key benefits of competition.")

5 *See* Verizon Comments at 49; Reply Comments of Verizon and Verizon Wireless, WC Docket No. 05-25, Attachment B: Declaration of Quintin Lew and Anthony Recine, ¶ 10, (Feb. 24, 2010) ("Verizon Reply Comments" and "Lew/Recine Decl.")

6 *See, e.g.,* Letter from Donna Epps, Verizon to Marlene Dortch, FCC, WC Docket No. 05-25, at 3 (Oct. 27, 2009) ("Verizon Ex Parte," attached hereto as Attachment B).

7 *See* Verizon Ex Parte at 2.

8 Under the Commission's pricing flexibility rules, ILECs can obtain pricing flexibility relief for special access transport and channel terminations on an MSA-wide basis by making a showing sufficient to satisfy the Commission's competitive triggers, which conservatively focus on the number of collocated competitors. Phase I ("contract") pricing flexibility relief simply means that the ILEC is allowed to offer tariffed, negotiated, individualized discount plans (pricing flexibility contracts), but must still make special access services available to all customers at price cap rates. Phase II ("uncapped") pricing flexibility relief simply means that the ILEC is allowed to offer tariffed, negotiated pricing flexibility contracts, but is not required to offer special access services at price cap rates. The rates for uncapped special access services are still subject to Section 201 and tariffing obligations. The Commission's competitive triggers for uncapped pricing flexibility relief are much more stringent than the competitive triggers for contract pricing relief. Verizon has obtained uncapped pricing relief for channel terminations

can offer generally available term or volume-based discounts everywhere that it offers special access services. Because these plans are tariffed, they are subject to Section 201's just and reasonableness standard.

Verizon's generally available discount plans are not individualized for a specific customer. Instead, Verizon's generally available discount plans contain a range of terms and conditions that are responsive to the needs of many different types of special access purchasers.[9] Many customers participate in more than one of Verizon's generally available discount plans, and these plans are popular with a wide range of special access purchasers including, large and small carrier customers, wireless providers and large and small enterprise customers.[10]

Verizon offers two types of generally available discount plans: (1) circuit-specific plans, which provide customers with substantial discounts in exchange for a term (but not volume) commitment for a specific circuit;[11] and (2) non-circuit specific plans, which provide customers with substantial discounts in all special access services purchased in the regions covered under the plan in exchange for a term commitment or a term and volume commitment for a percentage of the customer's special access purchases from Verizon (but not the customer's entire high-capacity usage).[12] These plans are entirely voluntary and customers can choose the type of generally available discount plan that best meets their individual needs.[13] Customers receive comparable levels of discounts regardless of whether they participate in a circuit-specific or non-circuit specific discount plan.[14]

a. Verizon's Circuit-Specific Discount Plans

Verizon's circuit-specific discount plans meet the needs of many different types of special access purchasers, and in particular customers who are unwilling to make a volume commitment, as well as customers who want the ability to commit circuits for a mixture of terms.[15] Customers participating in Verizon's circuit-specific discount plans enroll each circuit

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only in a limited number of MSAs. Verizon has not obtained uncapped pricing relief for channel terminations in MSAs that are widely recognized as being competitive, including the New York MSA.

9 *See id*. ¶¶ 4, 9, 10, 13.

10 *See id*. ¶ 10.

11 *See id*. ¶ 14. Examples of Verizon's circuit-specific, generally available discount plans include the Term Pricing Plan (FCC No. 1 Sections 7.4.13 and 7.4.17) and the Service Discount Plan (FCC No. 11, Section 7.4.10).

12 *See* Lew/Recine Decl. ¶¶ 18, 19, 22. Examples of Verizon's non-circuit specific, generally available discount plans include the Commitment Discount Plan (FCC Nos. 1 and 11, Section 25.1) and the National Discount Plan (FCC No. 1, Section 25.3; FCC No. 11, Section 25.2, FCC No. 14 Section 23.1, FCC No. 16, Section 22.1).

13 *See* Lew/Recine Decl. ¶¶ 16, 19.

14 *See id*. ¶ 17.

15 *See id*. ¶¶ 16, 17.

separately in the plan, and can choose a different term for each circuit enrolled in the plan.[16] The available terms range from one to ten years, with increasing discounts for longer terms.[17] This structure allows the customer to enroll a small portion of its special access purchases from Verizon in a discount plan, and also allows the customer to enroll individual circuits for a mix of long and short terms.[18] Accordingly, circuit-specific plans are particularly attractive to customers who are building out their own facilities and plan to eventually migrate circuits to their own networks.[19] And, because Verizon's circuit-specific discount plans do not require a volume commitment, these plans are attractive to customers who purchase smaller volumes of special access circuits from Verizon. Indeed, customers who purchase a single circuit from Verizon can receive substantial discounts under Verizon's circuit-specific discount plans.[20]

Verizon's circuit-specific discount plans provide discounts on a per-circuit basis and customers receive these discounts in both price cap and pricing flexibility areas. These discounts apply to Verizon's standard tariffed rates which typically vary by study area and also by rate zone. Thus, customers could pay a different rate for each individual circuit enrolled in the plan. As an example, under Verizon's Service Discount Plan (which covers the former NYNEX states), a customer who purchases ten special access circuits from Verizon in widely dispersed locations in New York State would separately enroll each individual circuit in the plan.[21] The customer would then receive discounts on each circuit enrolled in the plan.

b. Verizon's Non-Circuit Specific Discount Plans

Verizon's non-circuit specific discount plans are designed for customers who purchase multiple special access circuits from Verizon. These types of customers typically want the convenience of receiving discounts without having to track the status of numerous individual circuits.[22] In addition to ease of administration, Verizon's non-circuit specific discount plans allow customers to move individual circuits in and out of service without incurring termination charges, provided that the applicable minimum period requirement (which is typically one year) and volume commitment level (which is a percentage of the special access services the customer purchases from Verizon) are satisfied.[23] This feature allows customers to disconnect circuits in areas where they are building out facilities, and add new circuits in areas where they may not yet have facilities.[24]

Under Verizon's non-circuit specific discount plans, customers enroll all of their special access purchases from Verizon in a particular region (which can include Verizon's national

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16 *See id*. ¶ 16.
17 *See id*.
18 *See id*.
19 *See id*.
20 *See id*. ¶ 14.
21 *See* Verizon's FCC Tariff No. 11, Section 7.4.10.
22 *See* Lew/Recine Decl. ¶ 20.
23 *See id*. ¶ 22.
24 *See id*.

footprint, Verizon's East Region[25] or Verizon's West Region[26]) for a single term. Customers can choose a term of between two and ten years, with increasing discounts for longer terms.[27] Some of Verizon's non-circuit specific discount plans require both a volume and term commitment, with increasing discounts for longer terms and larger volumes.[28] Where a volume commitment is required, customers are asked to commit to maintain a percentage of their special access purchases from Verizon, but not their entire high-capacity usage. In turn, customers receive discounts on all of their special access purchases from Verizon in the regions covered under the plan—including any purchases above the required commitment level.

Verizon's non-circuit specific discount plans offer discounts across broad geographic areas, including Verizon's entire footprint, Verizon's East Region and Verizon's West Region.[29] Verizon is not required by regulation to price its special access services in this manner. However, Verizon offers discounts across broad geographic areas because this is consistent with the way that many customers purchase special access services. In addition, broad geographic discounts are also responsive to customer requests for discounts at every location where they purchase special access services. Indeed, many of Verizon's special access customers purchase special access services for multiple, widely dispersed locations.[30] Offering discounts across broad geographic areas allows customers to benefit from marketplace competition at all of these locations, even in locations where competition may not yet be as extensive.[31] For example, Verizon's National Discount Plan (NDP), provides customers with discounts on all special access DS1 and DS3 purchases from Verizon nationwide.[32] Verizon also offers the Commitment Discount Plan (CDP) which provides discounts across Verizon's East region, and the Term and Volume Plan and the Term Payment Plan which provide discounts across Verizon's West region.[33]

The discounts available under Verizon's non-circuit specific discount plans are applied to Verizon's standard or base tariffed rates, which typically vary by study area (which are roughly equal to an entire state and typically contain several different density zones) and also by density zone. As a result, customers generally pay a range of prices for special access services purchased under Verizon's generally available, non-circuit specific discount plans. Customers

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25 Verizon's East Region includes the region covered under Verizon's FCC Tariff Nos. 1 (the former Bell-Atlantic (Mid-Atlantic) region) and FCC No. 11 (the former NYNEX (New York and New England) region).

26 Verizon's West Region includes the region covered under Verizon's FCC Tariff Nos. 14 [the former GTE (Southern and Western) region] and FCC 16 [the former Contel (Southern and Western) region].

27 *See* Lew/Recine Decl. ¶ 19.

28 *See id*.

29 *See id.* ¶ 12.

30 *See id*.

31 *See id*.

32 *See* Verizon Ex Parte at 5.

33 *See id*. at 6.

receive these discounts for both price cap and contract tariff and uncapped pricing flexibility areas.

2. Verizon's Tariffed, Negotiated Pricing Flexibility Contracts.

While Verizon's generally available discount plans offer substantial discounts to all customers, some customers also seek individualized discounts. In recent years, sophisticated purchasers of special access services have increasingly requested individualized discount plans. Thus, pricing flexibility contracts have become an important competitive tool.

In contrast to generally available discount plans, under the existing pricing flexibility regime, Verizon is only able to offer individualized pricing flexibility contracts in areas where Verizon has satisfied the competitive triggers necessary to obtain either contract tariff or uncapped pricing flexibility relief.[34] As a result, the discounts available under Verizon's pricing flexibility contracts only apply to special access services purchased in areas where Verizon has obtained such relief. However, customers who subscribe to pricing flexibility contracts can aggregate Verizon special access purchases for pricing flexibility and price cap areas to satisfy any applicable minimum volume or revenue commitment.

Like Verizon's generally available discount plans, pricing flexibility contracts are entirely voluntary. In addition, pricing flexibility contracts are negotiated. Customers who seek pricing flexibility contracts are typically sophisticated and have significant bargaining power during their negotiations with Verizon.[35] To date, Verizon has developed about fifty-eight unique pricing flexibility contracts for non-affiliate customers, including wireless providers, enterprise customers, and carrier customers. The terms and conditions of these contracts are tariffed, are subject to Section 201's just and reasonableness standard, and are available to any customer who satisfies the applicable eligibility criteria.

Pricing flexibility contracts typically provide discounts based on a term of years, and also a negotiated minimum annual revenue commitment or volume commitment. Like Verizon's generally available, non-circuit specific discount plans, pricing flexibility contracts allow customers to make changes (*i.e.,* adding or dropping specific circuits) to individual circuits provided that they continue to satisfy any minimum in-service period requirements as well as any required volume commitments. Verizon's pricing flexibility contracts also provide broad discounts in the areas where the customer seeks additional discounts. While customers can negotiate pricing flexibility contracts with a national scope, customers can also negotiate for pricing flexibility contracts covering much narrower geographic regions such as a metropolitan statistical area (MSA) or groups of MSAs.

Many of Verizon's pricing flexibility contracts act as overlays to Verizon's generally available discount plans. Customers who subscribe to these contracts receive substantial discounts on top of any discounts they may receive for participating in Verizon's generally

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[34] *See* Verizon Ex Parte at 2.
[35] *See* Lew/Recine Decl. ¶ 41.

available discount plans.[36] Unlike generally available discount plans, these additional discounts only apply to the customer's special access purchases in pricing flexibility areas. However, Verizon's pricing flexibility contracts typically count customer's special access purchases in non-pricing flexibility areas towards any minimum volume or revenue commitments in Verizon's pricing flexibility contracts.

Some of Verizon's pricing flexibility contracts do not serve as overlays to Verizon's generally available discount plans. Customers who subscribe to these types of pricing flexibility contracts will receive the negotiated discount on their special access purchases from Verizon in pricing flexibility areas only. For some contracts, customers negotiate for a flat rate on all of their special access purchases in the covered areas where Verizon has obtained pricing flexibility rates. Under these types of contracts, customers pay the same rate regardless for all rate zones and study areas in which the covered circuits are located. In other cases, customers negotiate for a percentage discount off of Verizon's standard or base tariffed rates in the covered areas where Verizon has obtained pricing flexibility relief—rates that may vary by study area or rate zone. Regardless of how the discount is structured, customers' special access purchases in non-pricing flexibility areas can typically be used to satisfy any minimum revenue or volume commitment.

3. Verizon's Special Access Discount Plans and Pricing Flexibility Contracts Do Not "Lock Up Competition."

Contrary to Level 3's claims, Verizon's generally available discount plans and pricing flexibility contracts do not require customers to "purchase upwards of 90 percent of their special access spends with the incumbent."[37] As explained above, Verizon's circuit-specific discount plans do not require any volume commitment. While some of Verizon's non-circuit specific discount plans and pricing flexibility contracts use volume commitments, those commitments do not require customers to exclusively purchase special access services from Verizon. Indeed, these volume commitments only apply to the special access services that the customer purchases from Verizon, not the customer's overall high-capacity or special access usage.[38] Thus, customers who participate in Verizon's volume-based discount plans and pricing flexibility contracts are able to, and in fact do, obtain high-capacity services from several different providers as well as through self-supply.

For example, Verizon's NDP has volume commitments of either eighty-five percent (for the standard option), ninety percent (for the premier option), or ninety-two percent (for the deluxe option) of the customer's special access purchases from Verizon.[39] If a customer participating in the premier option of Verizon's NDP purchases one hundred special access circuits from Verizon, the customer is only asked to commit to maintain ninety of those circuits

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[36] *See* Lew/Recine Decl. ¶ 38.
[37] *See* Level 3 Ex Parte.
[38] *See* Lew/Recine Decl. ¶¶ 23, 25.
[39] *See* Verizon FCC No. 1, Section 25.3; FCC No. 11, Section 25.2; FCC No. 14, Section 23.1; and FCC No. 16, Section 22.1.

with Verizon for a five year term. The customer would then remain able to shift the remaining ten circuits, as well as the customer's other high capacity service usage, to another provider or to its own network. And, the NDP's volume commitment would not impact the customer's overall special access purchases from other providers or the extent to which the customer self-supplies special access services.

In addition, Verizon's special access discount plans and pricing flexibility contracts make it relatively easy for customers to satisfy their volume commitments. Customers participating in Verizon's generally available discount plans are not required to purchase large volumes of special access services from Verizon. Under Verizon's CDP, a customer who purchases just fourteen DS1 channel terminations from Verizon can receive the same level of discounts as larger volume customers who subscribe to the CDP for the same term of years.[40] Additionally, Verizon's non-circuit specific discount plans and pricing flexibility contracts typically allow customers to aggregate their special access purchases across multiple regions. For example, under Verizon's NDP, customers can aggregate their special access DS1 and DS3 purchases throughout Verizon's footprint, allowing customers to qualify for even greater discounts. Verizon also offers plans that allow customers to aggregate their purchases across Verizon's West region as well as across Verizon's East region. Verizon's individualized pricing flexibility contracts likewise allow customers to aggregate their special access purchases from Verizon across broad regions for which the customer negotiates. In the event that a customer is unable to meet its volume commitment, the customer still retains a significant portion of the discounts it received and simply makes a shortfall payment that is typically the difference between what the customer actually paid, and what the customer would have paid if the customer satisfied the volume commitment.[41]

Finally, there is no merit to Level 3's claims that the termination liabilities for exiting an ILEC special access discount plan or pricing flexibility contract impede competition.[42] The termination liabilities under Verizon's special access discount plans and pricing flexibility contracts are fair and reasonable. Before the end of the selected term, customers can exit discount plans and pricing flexibility contracts that no longer meet their needs. Generally, customers who exit a plan before the end of the selected or negotiated term retain a significant portion of the discounts the customer received while they participated in the plan or contract tariff.[43] This means that in the event of early termination, the customer is left no worse off than if the customer had subscribed to a discount plan or pricing flexibility contract for the term of years that the customer actually obtained service.[44] For example, under Verizon's circuit-specific generally available discount plans or the CDP if a customer satisfies two years of a five year term, the customer typically pays the difference between the rates they paid for committing

40 *See* Lew/Recine Decl. ¶ 24.
41 *See id*. ¶ 31.
42 *See* Level 3 Ex Parte.
43 *See* Lew/Recine Decl. ¶¶ 29-32, 40.
44 *See id*.

to a five year term and the rates they would have paid for committing to a two year term. This effectively prorates the customer's termination liability.[45]

It is reasonable to use termination liabilities in the event that a customer exits a discount plan or pricing flexibility contract before the end of the selected term. Termination liabilities are used in other competitive industries. And, as Verizon has previously explained, when a customer agrees to a term commitment in exchange for greater discounts, termination liabilities assure that the service provider gets the benefit of the bargain if the customer exits the plan prior to the expiration of the selected service term or falls short of the volume commitment level.[46] Without termination or shortfall liabilities, providers would have to seek more onerous obligations, such as substantial up-front payments, or discontinue term and volume discounts altogether.

* * *

For the foregoing reasons, the Commission should continue to reject arguments that new, additional regulation on ILEC special access discount plans and pricing flexibility contracts is warranted. Verizon welcomes the opportunity to discuss its generally available discount plans and pricing flexibility contracts for special access services further with Commission Staff.

Sincerely,

Donna Epps

Attachments

cc: Sharon Gillett
Paul De Sa
Jonathan Baker
Nick Alexander
Don Stockdale
Albert Lewis

45 *See id*. ¶ 30.
46 *See* Lew/Recine Decl. ¶ 29.

ATTACHMENT A

Attachment A

Generally Available Discount Plans		
	Circuit Specific	**Non-circuit Specific**
Description	These discount plans are tariffed and open to all customers. They are not individualized for specific customers. The plans require term commitments (but no volume commitment) for each specific circuit enrolled in the plan. Depending on the provisions of the plan, each circuit may be enrolled for a different term of years. Discounts are provided on a per circuit basis. Discounts increase for longer terms. Customers can purchase a single circuit and receive a substantial discount.	These discount plans are tariffed and open to all customers. They are not individualized for specific customers. The plans cover and provide discounts for broad geographic areas (*e.g.*, Nationwide, FCC Nos. 1 and 11, FCC Nos. 14 and 16). The discounts are based on a term commitment or a combined term and volume commitment. These plans do not prohibit purchases from non-Verizon providers or self-supply. Discounts generally increase for longer terms or greater volumes. The plans cover all of the customer's special access purchases from Verizon in the covered tariff region, which could span multiple states. Customers can purchase even relatively small volumes to qualify for discounts under some of these plans.
Regulatory Limitations	The plans are available in price cap and pricing flexibility areas.	The plans are available in price cap and pricing flexibility areas.
Plan Names	Term Pricing Plan (Verizon FCC Tariff No. 1) and Service Discount Plan (Verizon FCC No. 11)	National Discount Plan (all tariffs); Commitment Discount Plan (Verizon FCC Tariff Nos. 1 and 11); Term and Volume Payment Plan (Verizon FCC Nos. 14 and 16); Term Payment Plan (Verizon FCC Nos. 14 and 16); Term and Volume Plan, Eight and Ten Term and Volume Plan, and DS3 Term and Volume Plan (FCC No. 14 and/or FCC No. 16); and Term Payment Plan (FCC 16).

Customer-Specific Pricing Flexibility Contracts	
Description:	These contracts are individually negotiated contracts that provide substantial discounts based on a term of years and volume or revenue commitment. These contracts are filed in public tariffs. The contracts are tailored for a specific customer's requirements based on negotiations. Each contract, which is filed publicly in a tariff, is open to all customers that can meet the terms and conditions of the specific contract. Customers can negotiate for contract to cover broad (multiple states) or more narrow geographic areas (a single metropolitan statistical area). These contracts do not prohibit purchases from other non-Verizon providers or self-supply. The discounts are generally applied to Verizon's month-to-month tariffed rates or to the already discounted rates available under Verizon's generally available discount plans.
Regulatory Limitations	The discounts are only available for special access purchases in Phase I ("contract") and Phase II ("uncapped") pricing flexibility areas. Purchases in non-pricing flexibility areas can be counted towards any minimum annual revenue or volume commitment.

ATTACHMENT B

Donna Epps
Vice President
Federal Regulatory Affairs

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October 27, 2009

Ex Parte

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Special Access Rates for Price Cap Local Exchange Carriers; WC Docket 05-25

Dear Ms. Dortch:

In response to questions raised by staff, Verizon is submitting the attached document into the above-referenced proceeding.

Sincerely,

Donna Epps

Attachment

Regulation of Special Access and High Capacity Services

Special access services, such as DS1 and DS3 services, are a subset of high capacity transmission services that many service providers offer. In addition to special access, high capacity services include optical services (*e.g.*, OCn services), packet switched services (*e.g.*, Ethernet), and fixed wireless services (*e.g.*, Microwave). Different high capacity services are subject to different types of regulation.

Special Access Services

High capacity special access services, such as DS1s and DS3s, are traditional time-division multiplexed (TDM) dedicated transmission services. DS1 services provide a speed of 1.544 Mbps, which is the equivalent of 24 voice channels. DS3 services provide a speed of 44.736 Mbps, which is the equivalent of 672 voice channels.

Special access services, such as DS1 and DS3 services, have three basic components: (1) channel termination; (2) transport, and (3) optional features and functions. The first component – channel termination – provides for transmission between the customer's premise and the nearest serving wire center of the incumbent LEC. This component is sometimes referred to as the "last mile." The channel termination is priced on the basis of a fixed monthly charge that is not distance sensitive, but may vary by geographic area or volume (e.g., FCC No. 11, Section 31.7.9 (A)(1) for DS3 channel terminations)

The second component – transport – provides for transmission between different serving wire centers of the incumbent LEC. This component is a part of what is sometimes referred to as the "middle mile." The transport component is typically priced on the basis of a fixed monthly charge and a distance-sensitive monthly charge.

The third component – optional features and functions – provides for optional features and functions which may be added to a special access service to improve its quality or utility to meet specific communications requirements. These are not necessarily identifiable with specific equipment, but rather represent the end result in terms of performance characteristics which may be obtained. Examples of optional features and functions include signaling capability, central office multiplexing, and conditioning. This component is typically priced on the basis of a fixed monthly charge.

Price Caps and Pricing Flexibility for Special Access Services

Special access services (*i.e.*, DS1 and DS3) provided by incumbent LECs are subject to Title II dominant carrier regulation. This means that incumbent LECs must provide these services pursuant to publicly filed tariffs. Except in limited circumstances, the rates set forth in these tariffs of price-cap incumbent LECs are subject to the Commission's price cap rules.

In 1999, the Commission established a framework for granting price-cap LECs more pricing flexibility for special access services. A price-cap LEC may apply for pricing flexibility in a Metropolitan Statistical Area (MSA) for some or all components of special access. For example, a price-cap LEC may apply for pricing flexibility for the special access "transport and optional features and functions" category in the Chicago MSA. In order to obtain pricing flexibility, the price-cap LEC must demonstrate that certain competitive benchmarks have been satisfied in that MSA. The Commission's competitive triggers are designed to measure the extent to which competitors had made irreversible, sunk investment in collocation and transport facilities. Because these triggers only look at collocation and transport, they don't consider all forms of competition, such as cable companies and fixed wireless providers that don't collocate.

The Commission's pricing flexibility framework has two phases. Phase I pricing flexibility allows the price-cap LEC to offer certain special access services pursuant to individually negotiated contract tariffs that are generally available to all "similarly situated" customers. Under Phase I relief, the price-cap LEC may offer discounts in contract tariffs on one day's notice, so long as the quantities of services provided pursuant to contract tariffs are removed from price caps. LECs receiving Phase I flexibility must maintain their generally available, price cap constrained tariffed rates for these services.

Phase II pricing flexibility also allows the price-cap LEC to offer certain special access services pursuant to individually negotiated contracts tariffs that are generally available to all "similarly situated" customers. As with Phase I relief, the price-cap LEC may offer discounts in Phase II contract tariffs on one day's notice. All demand and revenue associated with services in Phase II tariffs are removed from price cap regulation.

The Commission's competitive triggers for pricing flexibility vary depending on the phase of relief and the special access component. The competitive triggers are more stringent for Phase II relief than for Phase I relief, and for the end user channel termination component than for the All Other category (*i.e.*, transport and optional features and functions components). Because of the difficulty of meeting these triggers, Verizon has obtained end user channel termination pricing flexibility for only 12 percent of the MSAs where its price-cap LECs provide special access services. Verizon has not obtained Phase II end user channel termination pricing flexibility for its most populous MSAs, such as New York, Boston, Washington, DC and Los Angeles.

FCC Competitive Triggers for Special Access Pricing Flexibility[1]		
Component	Phase I	Phase II
All Other (i.e.,	Unaffiliated competitors have collocated in at least 15% of the LEC's wire	Unaffiliated competitors have collocated in at least 50% of the LEC's wire centers within

[1] To satisfy the collocation triggers, an incumbent LEC must demonstrate, with respect to each wire center with collocation, that at least one of the unaffiliated competitors therein uses transport services provided by a transport provider other than the incumbent LEC.

Transport and Optional Features and Functions)	centers within an MSA or collocated in wire centers accounting for 30% of the LEC's revenues from these services within the MSA	an MSA or collocated in wire centers accounting for 65% of the LEC's revenues from these services within the MSA
Channel Termination	Unaffiliated competitors have collocated in at least 50% of the LEC's wire centers within an MSA or collocated in wire centers accounting for 65% of the LEC's revenues from these services within the MSA	Unaffiliated competitors have collocated in at least 65% of the LEC's wire centers within an MSA or collocated in wire centers accounting for 85% of the LEC's revenues from these services within the MSA

Special access services offered by competitive local exchange carriers (CLECs) are subject to Title II non-dominant carrier obligations. CLECs offer these services under contract rather than tariff. These contracts are not filed publically with the FCC, but must be made available to similarly situated customers. CLECs' rates for special access services are not subject to price cap or rate of return regulation.

Verizon's Special Access Discount Plans

Verizon, like many other service providers, currently offers a large number of generally available discount plans for special access services and also offers tariffed pricing flexibility contracts and, from time-to-time, pricing flexibility promotions. Customers that have participated in Verizon's discount plans and/or pricing flexibility promotions and contracts have received substantial discounts on Verizon's standard month-to-month rates for special access services.[2] Participation in these pricing plans is entirely voluntary and customers can choose the plan that best meets their needs from a wide range of plans.

Verizon's pricing plans provide customers with discounts of between five and sixty-five percent off of Verizon's standard month-to-month rates. Over ninety percent of the special access revenues Verizon receives from selling special access services to carrier customers comes from discounted services purchased under Verizon's generally available discount plans and pricing flexibility promotions and contract tariffs. In addition to pressuring service providers to

[2] Verizon's sells the vast majority of its interstate regulated special access services under its federal tariffs. Verizon's interstate access tariffs are: FCC No. 1 - Former Bell Atlantic (Mid-Atlantic States); FCC No. 11 - Former NYNEX (New York and New England States); FCC No. 14 - Former GTE (Southern and Western Regions); FCC No. 16 - Former Contel (Southern and Western Regions). In addition to these region-specific tariffs, Verizon has tariffs that apply across all the operating territories of the Verizon operating companies. These tariffs include FCC No. 20 (packet switched services (*e.g.*, 56 Kbps frame relay) and "forborne" packet switched services with speeds over 200 Kbps in each direction that are grandfathered and not available to new customers) and FCC No. 21 (special construction arrangements).

voluntarily offer pricing plans, market forces have pressured service providers to include features in those pricing plans that are responsive to customers' requests for, among other things, ease of administration, ability to aggregate their purchases, flexibility to move circuits in and out of service, and the payment of flat-rate mileage pricing.

Under discount plans that include term commitments, customers can make purchases that take into account their long term network plans. In the event a customer exits the discount plan before the end of the customer's selected term length, the termination fees generally are limited so that the customer is left no worse off than if the customer had signed up for terms equivalent to the time the covered circuits remained in service. For example, customers can exit discount plans that no longer meet their needs and still receive discounts generally proportionate to the length of time they participated in those plans.

> *Term Pricing Plan/Service Discount Plan*. Verizon's circuit specific discount plans, such as the Term Pricing Plan[3] and the Service Discount Plan,[4] offer customers substantial discounts in exchange for customers' commitments to lease specific circuits from Verizon for specific terms, typically ranging from one to ten years, with generally greater discounts for longer term commitments. Under these plans, customers can receive substantial discounts even if they purchase a single circuit from Verizon in a single location. Customers can generally select the term length that best meets their needs and do not have to commit to long terms to obtain substantial discounts.
>
> *Commitment Discount Plan/Term and Volume Plan/Term Payment Plan*. Verizon's non-circuit specific discount plans, such as the Commitment Discount Plan[5] and the Term and Volume Plan[6] and Term Payment Plan,[7] offers discounts based on a customer's commitment to maintain a certain number of special access services with Verizon for a specific term without regard to whether any particular circuit is kept in service during the customer's selected term (however, the circuit must be kept in service for a minimum period that is less than the term length). In contrast to circuit specific discount plans, these non-circuit specific plans give customers the flexibility to disconnect circuits without incurring any termination liability as long as the customer meets the minimum period requirement and the selected volume commitment or commitment level. Customers participating in these plans can reduce the number of special access circuits in one area as they build out their own facilities, while adding special access circuits in

[3] FCC No. 1, Sections 7.4.13 and 7.4.17.

[4] FCC No. 11, Section 7.4.10.

[5] FCC Nos. 1 and 11, Section 25.1 – For the former Bell Atlantic and NYNEX serving areas.

[6] FCC No. 14, Sections 5.6.14 and 5.6.19 – For the former GTE (Southern and Western Regions) serving areas.

[7] FCC No. 16, Section 7.2.1(G) – For the former Contel (Southern and Western Regions) serving areas.

other areas as they begin to build a customer base in advance of deploying facilities in new areas. These plans do not require customers to purchase all or a fixed percentage of their special access services from Verizon.

National Discount Plan. Verizon's National Discount Plan[8] is a non-circuit specific discount plan that provides customers with even more flexibility and ease of administration because it is national in scope. Under this plan, customers receive substantial nationwide discounts for special access DS1 and DS3 services and the flexibility of adding, disconnecting, and moving circuits across Verizon's footprint in exchange for specific term and volume commitments. This plan does not require customers to purchase all or a fixed percentage of their special access services from Verizon. Customers can choose to maintain one of three volume commitment levels with Verizon over a five-year term, with discounts increasing each year. At the end of the five-year term, customers can renew and receive the entire fifth year discount rate for the entire renewal term.

Pricing Flexibility Promotion and Contract Tariffs. Verizon offers substantial discounts through individually-negotiated pricing flexibility contract tariffs. Since each contract must be made available to all "similarly situated" customers, the terms and provisions for each contract are published in Verizon's access service tariffs.[9] These contract tariffs are voluntary for the customers – they are negotiated between Verizon and customers who typically are large sophisticated purchases of communications services. The contract tariffs provide for unique provisions and rates and/or discounts over and above what customers get under Verizon's other discount plans.

Enterprise Broadband Services

Enterprise broadband services are non-TDM-based optical transmission and packet switched services. The optical services include Optical Carrier (OCn) services and the packet switched services include Ethernet, frame relay, and asynchronous transfer mode (ATM) services with speeds over 200 Kbps in each direction. Verizon's Enterprise broadband services are subject to Title I regulation and are provided under private carriage contracts, rather than under tariffs.

Other High Capacity Services

[8] FCC No. 1, Section 25.3 – For the former Bell Atlantic serving areas; FCC No. 11, Section 25.2 – for the former NYNEX serving areas; FCC No. 14, Section 23.1 – For the former GTE (Southern and Western Regions) serving areas; and FCC No. 16, Section 22.1 – For the former Contel (Southern and Western Regions) serving areas.

[9] FCC No. 1, Section 21 – For the former Bell Atlantic serving areas; FCC No. 11, Section 32 – For the former NYNEX serving areas; FCC No.14, Section 21 – For the former GTE (Southern and Western Regions) serving areas; and FCC No. 20, Section 9 – For all the applicable Verizon serving areas.

Other high capacity services offered by competing providers include microwave, cable and dedicated fiber transmission. These services and facilities are not subject to price or tariff regulation.

Verizon Access Tariffs

	FCC No. 1	FCC No. 11	FCC No. 14	FCC No. 16	FCC No. 20
General regulations and provisions that apply to all services contained in the tariff	Sec. 2	Sec, 2	Sec. 2	Sec. 2	Sec. 2
Rates and terms for end user access services	Sec. 4	Sec. 4 Sec. 31.4	Sec. 13	Sec. 4	NA
Rates and terms for Switched Access Service	Sec. 6	Sec 6 Sec. 30.6 Sec. 31.6	Sec. 4	Sec. 6	NA
Rates and terms for Special Access Service	Sec. 7	Sec. 7 Sec. 30.7 Sec. 31.7	Sec 5	Sec. 7	Sec. 5
Term Pricing Plan	Sec. 7	NA	NA	NA	NA
Service Discount Plan	NA	Sec. 7	NA	NA	NA
Commitment Discount Plan	Sec. 25.1	Sec. 25.1	NA	NA	NA
Term and Volume Plan	NA	NA	Sec 5	NA	NA
Term Payment Plan	NA	NA	NA	Sec. 7	NA
National Discount Plan	Sec. 25.3	Sec. 25.2	Sec. 23.1	Sec. 22.1	NA
Pricing Flexibility Promotion and Contract Tariff	Sec. 21	Sec. 32	Sec. 21	NA	Sec. 9